

## Consumer Product Safety Commission

## § 1025.67

(b) *Exception.* Any person who is not an attorney at law and whose application has not been approved shall not be permitted to appear in Commission proceedings. However, this provision shall not apply to any person who appears before the Commission on his/her own behalf or on behalf of any corporation, partnership, or unincorporated association of which the person is a partner or general officer.

### § 1025.66 Qualifications and standards of conduct.

(a) *Good faith transactions.* The Commission expects all persons appearing in proceedings before the Commission or the Presiding Officer to act with integrity, with respect, and in an ethical manner. Business transacted before and with the Commission or the Presiding Officer shall be conducted in good faith.

(b) *Exclusion of parties, participants, or their representatives.* To maintain orderly proceedings, the Commission or the Presiding Officer may exclude parties, participants, or their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition in § 1025.68 against certain *ex parte* communications.

(c) *Exclusions from the record.* The Presiding Officer or the Commission may disregard and order the exclusion from the record of any written or oral submissions or representations which are not made in good faith or which are unfair, incomplete, or inaccurate.

(d) *Appeal by excluded party.* An excluded party, participant, or representative may petition the Commission to entertain an interlocutory appeal in accordance with § 1025.24 of these rules. If, after such appeal, the representative of a party or participant is excluded, the hearing shall, at the request of the party or participant, be suspended for a reasonable time so that the party or participant may obtain another representative.

### § 1025.67 Restrictions as to former members and employees.

(a) *Generally.* Except as otherwise provided in paragraph (b) of this sec-

tion, the post-employee restrictions applicable to former Commission members and employees, as set forth in the Commission's "Post Employment Restrictions Applicable to Former Commission Officers and Employees", 16 CFR part 1030, subpart L, shall govern the activities of former Commission members and employees in matters connected with their former duties and responsibilities.

(b) *Participation as witness.* A former member or employee of the Commission may testify in any proceeding subject to these Rules concerning his/her participation in any Commission activity. This section does not constitute a waiver by the Commission of any objection provided by law to testimony that would disclose privileged or confidential material. The provisions of 18 U.S.C. 1905 prohibiting the disclosure of trade secrets also applies to testimony by former members and employees.

(c) *Procedure for requesting authorization to appear.* In cases to which paragraph (a) of this section is applicable, a former member or employee of the Commission may request authorization to appear or participate in any proceedings or investigation by filing with the Secretary a written application disclosing the following information:

(1) The nature and extent of the former member's or employee's participation in, knowledge of, and connection with the proceedings or investigation during his/her service with the Commission;

(2) Whether the files of the proceedings or investigation came to his/her attention;

(3) Whether he/she was employed in the directorate, division, or other organizational unit within the Commission in which the proceedings or investigation is or has been pending;

(4) Whether he/she worked directly or in close association with Commission personnel assigned to the proceedings or investigation and, if so, with whom and in what capacity; and

(5) Whether during service with the Commission, he/she was engaged in any matter concerning the person involved in the proceedings or investigation.

(d) *Denial of request to appear.* The requested authorization shall not be given in any case:

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(1) Where it appears that the former member or employee, during service with the Commission, participated personally and substantially in the proceedings or investigation; or

(2) Where the Commission is not satisfied that the appearance or participation will not involve any actual or apparent impropriety; or

(3) In any case which would result in a violation of title 18, United States Code, section 207.

§ 1025.68 **Prohibited communications.**

(a) *Applicability.* This section is applicable during the period commencing with the date of issuance of a complaint and ending upon final Commission action in the matter.

(b) *Definitions*—(1) *Decision-maker.* Those Commission personnel who render decisions in adjudicative proceedings under these rules, or who advise officials who render such decisions, including:

(i) The Commissioners and their staffs;

(ii) The Administrative Law Judges and their staffs;

(iii) The General Counsel and his/her staff, unless otherwise designated by the General Counsel.

(2) *Ex parte communication.* (i) Any written communication concerning a matter in adjudication which is made to a decision-maker by any person subject to these Rules, which is not served on all parties; or

(ii) Any oral communication concerning a matter in adjudication which is made to a decision-maker by any person subject to these Rules, without advance notice to all parties to the proceedings and opportunity for them to be present.

(c) *Prohibited ex parte communications.* Any oral or written *ex parte* communication relative to the merits of any proceedings under these Rules is a prohibited *ex parte* communication, except as otherwise provided in paragraph (d) of this section.

(d) *Permissible ex parte communications.* The following communications shall not be prohibited under this section.

(1) *Ex parte* communications authorized by statute or by these rules. (See, for example, § 1025.38 which governs ap-

plications for the issuance of subpoenas.)

(2) Any staff communication concerning judicial review or judicial enforcement in any matter pending before or decided by the Commission.

(e) *Procedures for handling prohibited ex parte communication*—(1) *Prohibited written ex parte communication.* To the extent possible, a prohibited written *ex parte* communication received by any Commission employee shall be forwarded to the Secretary rather than to a decision-maker. A prohibited written *ex parte* communication which reaches a decision-maker shall be forwarded by the decision-maker to the Secretary. If the circumstances in which a prohibited *ex parte* written communication was made are not apparent from the communication itself, a statement describing those circumstances shall be forwarded with the communication.

(2) *Prohibited oral ex parte communication.* (i) If a prohibited oral *ex parte* communication is made to a decision-maker, he/she shall advise the person making the communication that the communication is prohibited and shall terminate the discussion; and

(ii) In the event of a prohibited oral *ex parte* communication, the decision-maker shall forward to the Secretary a signed and dated statement containing such of the following information as is known to him/her.

(A) The title and docket number of the proceedings;

(B) The name and address of the person making the communication and his/her relationship (if any) to the parties and/or participants to the proceedings;

(C) The date and time of the communication, its duration, and the circumstances (e.g., telephone call, personal interview, etc.) under which it was made;

(D) A brief statement of the substance of the matters discussed; and

(E) Whether the person making the communication persisted in doing so after being advised that the communication was prohibited.

(3) *Filing.* All communications and statements forwarded to the Secretary under this section shall be placed in a public file which shall be associated with, but not made a part of, the